

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

April 15, 2010

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, April 15, 2010, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: G. Nelson Van Fleet, Chair; Debra Miller Stevens, Vice Chair; David Dennis; Darrell Downing; Shawn Farney; David Foster; Bud Hentzen; Don Klausmeyer; Ronald Marnell; John W. McKay Jr.; M.S. Mitchell and Don Sherman (In @1:32 P.M.). Hoyt Hillman and Joe Johnson were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; Joe Lang, Chief Deputy City Attorney; Bob Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

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1. Approval of the March 18, 2010 and April 1, 2010 MAPC meeting minutes:

Approval of the March 18, 2010 MAPC minutes.

MOTION: To approve the March 18, 2010 minutes, as amended.

MILLER STEVENS moved, **HENTZEN** seconded the motion, and it carried (10-0-1).
MCKAY – Abstained.

Approval of the April 1, 2010 MAPC meeting minutes.

MOTION: To approve the April 1, 2010 minutes, as amended.

MILLER STEVENS moved, **HENTZEN** seconded the motion, and it carried (11-0).

SHERMAN (In @1:32 P.M.)

2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS

- 2-1. **SUB 2010-18: Final Plat -- MONARCH LANDING 3rd ADDITION**, located north of 21st Street North and on the west side of 159th Street East.

Note: This final plat consists of the east portion of the overall preliminary plat approved for the site and represents the second phase of development. The street layout and lot configuration have been revised.

STAFF COMMENTS:

- A. City of Wichita Water Utilities Department requests a petition for the extension of sanitary sewer (main and lateral) and City water (transmission and distribution mains).
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.

- C. City Engineering has approved the applicant's drainage plan. A cross-lot drainage agreement is needed with the property to the north.
- D. Traffic Engineering has approved the access controls. The plat proposes one street opening along 159th Street East and complete access control along the remaining street frontage.
- E. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- F. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- G. The plat's text shall include the language that the owners of the reserve shall bear the cost of any repair or replacement of improvements within Reserve B resulting from street construction, repair, or maintenance.
- H. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- I. The applicant shall submit a covenant that provides four (4) off-street parking spaces per lot that abuts a 32-foot or 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- J. The wall easement shall be referenced in the plat's text.
- K. GIS has approved the plat's street names.
- L. The street centerline curve table shall be spelled correctly.
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone:

316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Westar Energy has requested additional easements.
- V. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

FARNEY moved, **HENTZEN** seconded the motion, and it carried (12-0).

- 2-2. SUB 2010-19: One-Step Final Plat -- DUNBAR ADDITION**, located west of Hydraulic, north of Central.

Note: This is an unplatted site located in the City of Wichita. The plat includes the vacation of twenty feet of 9th Street and the vacation of a portion of a north-south alley.

STAFF COMMENTS:

- A. City of Wichita Water Utilities Department advises that water and sewer services are available.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the applicant's drainage plan.
- D. Since the vacation of the north-south alley has created an off-site stub, a dedication of right-of-way for a turnaround will be needed from the applicant.
- E. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified

with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- F. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- G. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- H. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- I. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- J. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- K. Perimeter closure computations shall be submitted with the final plat tracing.
- L. Westar Energy advises the applicant of existing equipment in the alley location that is proposed to be vacated for this plat. The area with the equipment needs to be retained as easement. Any relocation or removal of the equipment shall be at the applicant's expense.
- M. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

FARNEY moved, **HENTZEN** seconded the motion, and it carried (12-0).

3. PUBLIC HEARING – VACATION ITEMS

3-1. VAC2010-03: City request to vacate a portion of platted complete access control.

APPLICANT/AGENT: Ridge Plaza LLC (owner) Baughman Company, c/o Phil Meyer (agent)

- LEGAL DESCRIPTION:** Generally described as vacating a portion of platted complete access control to allow a 40-foot drive onto Ridge Road off of Lot 1, Woodland Heights 2nd Addition, Wichita, Sedgwick County, Kansas
- LOCATION:** Generally located south of Central Avenue, midway between Shade and Freeman Lanes, on the east side of Ridge Road. (WCC #VI)
- REASON FOR REQUEST:** Allow one (1) right-in – right-out drive
- CURRENT ZONING:** The site is zoned LC Limited Commercial (“LC”), with CUP DP-59 overlay. Abutting eastern property is zoned GC General Commercial (“GC”), DP-59, adjacent northern property is zoned GO General Office (“GO”) and SF-5 Single-Family Residential and adjacent western properties are zoned SF-5.

The applicant proposes one 40-foot wide drive along the site’s Ridge Road frontage. Ridge is a four-lane arterial at this section. This site was originally platted with complete access control along Ridge Road. V-2167 (1999) allowed a full movement drive, lining up with Brunswick Drive (public ROW), located west, across Ridge Road from the site. The site also has access onto Shade Lane, located on its south side. The proposed vacation will have traffic leaving the site pointing at the back yards of the SF-5 zoned single-family subdivision located across Ridge, west of the site. Traffic is recommending that the proposed drive meet current standards of 200 feet of separation from the existing drive from Lot 1, Woodland Heights 2nd Addition onto Ridge Road. Traffic is recommending that the proposed drive be right-in and right out, with an approved design to ensure that it function that way. There is public sewer and water located in this portion of Ridge. The Woodland Heights 2nd Addition was recorded with the Register of Deeds April 4, 1985.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Traffic, Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of platted complete access control.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time March 25, 2010, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the described portion of the platted complete access control and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Vacate the platted complete access control along the site’s Ridge Road frontage to allow one (1), 40-foot wide right-in – right-out drive, as approved by the Traffic Engineer. Provide Traffic with a design for the drive to be right-in right-out for review and approval. Provide Planning Staff with a legal description of the approved vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. Provide to Planning prior to the case going to Council for final action.

- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
- (3) All improvements shall be according to City Standards and at the applicant's expense, including the new drive from the site onto public ROW.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the platted complete access control along the site's Ridge Road frontage to allow one (1), 40-foot wide right-in – right-out drive, as approved by the Traffic Engineer. Provide Traffic with a design for the drive to be right-in right-out for review and approval. Provide Planning Staff with a legal description of the approved vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. Provide proof of compliance with all conditions to Planning prior to the case going to Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
- (3) All improvements shall be according to City Standards and at the applicant's expense, including the new drive from the site onto public ROW.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

DENNIS moved, **FOSTER** seconded the motion, and it carried (12-0).

3-2. VAC2010-04: City request to vacate a portion of a platted setback.

OWNER/AGENT: Juan Gutierrez (owner/applicant)

LEGAL DESCRIPTION: A portion of the platted 30-foot front setback that runs parallel to the south lot line of the west 50 feet of Lot 27, Block 4, Pawnee Ranch Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located west of Hillside Avenue, south of Pawnee Avenue, west of Twin Oaks Road, on the north side of Clover Lane. (WCC #III)

REASON FOR REQUEST: Encroaching carport

CURRENT ZONING: Subject property and all abutting and adjacent properties are zoned SF-5 Single-family Residential ("SF-5").

The applicant proposes to vacate a portion of the platted 30-foot front yard setback, on the described property. The UZC's minimum front yard setback for the SF-5 zoning district is 25 feet. If the setback was not platted the applicant could request an Administrative Adjustment that would reduce the SF-5 zoning district's minimum 25-foot front yard setback by 20%, resulting in a 20-foot front yard setback. Reduction beyond the 20-foot front yard setback would require a variance, which is a separate public hearing process; the applicant is requesting a reduction of the front setback to 20 feet. There are no platted easements within the platted setback. There are no manholes, sewer or water lines within the described portion of the platted setback. The Pawnee Ranch Addition was recorded with the Register of Deeds June 14, 1947.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Traffic, Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of the platted setback.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time March 25, 2010, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the described portion of the platted front yard setback and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Vacate the north 10 feet of the platted 30-foot front yard setback that runs parallel to the south lot line of the west 50 feet of Lot 27, Block 4, Pawnee Ranch Addition, Wichita, Sedgwick County, Kansas.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the north 10 feet of the platted 30-foot front yard setback that runs parallel to the south lot line of the west 50 feet of Lot 27, Block 4, Pawnee Ranch Addition, Wichita, Sedgwick County, Kansas.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

DENNIS moved, **FOSTER** seconded the motion, and it carried (12-0).

3-3. VAC2010-05: City request to vacate a portion of platted street right-of-way (11th Street).

APPLICANTS/OWNERS: Cargill Inc., c/o Steve Matson & Hong's Equipment Leasing (applicants)
Ameritrack West, Inc. (agent)

LEGAL DESCRIPTION: Generally described as the west 215 feet of the 11th Street right-of-way (ROW), located between Mead Avenue (east), the Railroad ROW (west), abutting a portion of the south sides of Lots 1 & 2, Hodson's Addition and a portion of the north sides of Lots 33 & 34, Clays Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located between Mead Avenue and the Railroad ROW.
(WCC #VI)

REASON FOR REQUEST: To build a rail spur

CURRENT ZONING: 11th Street is a paved, local street ending at the recently raised railroad tracks and ground level track/rail right-of-way. All abutting and adjacent properties are zoned LI Limited Industrial ("LI").

The applicant is requesting the vacation of the described portion of 11th Street. 11th Street does not go under the recently raised railroad tracks nor cross the ground level track/rail right-of-way abutting its west side; the raised tracks make 11th Street a dead end street. The proposed vacation will leave the remaining, eastern portion of 11th Street intersecting with Mead Avenue, an unimproved, gravel and dirt local street; access for the two abutting property owners will not change & both property owners have applied for the vacation. There is a hydrant, water valve, water vault, water lines, storm water line and franchise utilities within the proposed vacated ROW. This portion of 11th Street was dedicated on the Hodson's Addition, which was recorded with the Register of Deeds August, 1885 and the Clay's Addition, which was recorded with the Register of Deeds October 16, 1884.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Traffic, Public Works/Water & Sewer/Storm

Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of platted street right-of-way.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time March 25, 2010, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the described portion of the platted street right-of-way and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Retain the described portion of the vacated 11th Street ROW as a utility and drainage easement. Provide Planning staff with a legal description of the approved vacated ROW on a word document via e-mail. Provide any additional easement as needed by dedication by separate instrument, prior to this vacation case going to City Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants; (a) relocate the domestic water valve and vault to the eastern remaining 11th Street ROW, (b) cut in another water valve on the 12-inch water main located within the eastern remaining 11th Street ROW, (c) replace the storm water line, prior to the new railroad track being laid. Retain all public ROW until all utilities have been relocated, as needed. Provide Planning staff with conformation of these requirements being completed; guarantees and/or plans/projects for review and approval prior to this vacation case going to City Council for final action.
- (3) All improvements shall be according to City Standards and at the applicant's expense; (a) the rail spur/track shall be constructed on a slab, on piles, i.e., using the same design as the previous/existing track crossing to protect utilities, (b) the rail spur crossing shall have a drivable surface crossing, to allow access to the existing fire hydrant. Provide Public Works/utilities with all needed guarantees and/or plans/projects for review and approval to ensure that those improvements will be made, prior to this vacation case going to City Council for final action.
- (4) Provide 24/7 access to fire, emergency services and utilities, as directed by those entities, at the applicant's expense.
- (5) A dead end sign will be provided, at the applicant's expense, as directed by the Traffic Engineer.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Retain the described portion of the vacated 11th Street ROW as a utility and drainage easement. Provide Planning staff with a legal description of the approved vacated ROW on a word document via e-mail. Provide any additional easement as needed by dedication by separate instrument, prior to this vacation case going to City Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants; (a) relocate the domestic water valve and vault to the eastern remaining 11th Street ROW, (b) cut in another water valve on the 12-inch water main located within the eastern remaining 11th Street ROW, (c) replace the storm water line, prior to the new railroad track being laid. Retain all public ROW until all utilities have been relocated, as needed. Provide Planning staff with conformation of these requirements being completed; guarantees and/or plans/projects for review and approval prior to this vacation case going to City Council for final action.
- (3) All improvements shall be according to City Standards and at the applicant's expense; (a) the rail spur/track shall be constructed on a slab, on piles, i.e., using the same design as the previous/existing track crossing to protect utilities, (b) the rail spur crossing shall have a drivable surface crossing, to allow access to the existing fire hydrant. Provide Public Works/utilities with all needed guarantees and/or plans/projects for review and approval to ensure that those improvements will be made, prior to this vacation case going to City Council for final action.
- (4) Provide 24/7 access to fire, emergency services and utilities, as directed by those entities, at the applicant's expense.
- (5) A dead end sign will be provided, at the applicant's expense, as directed by the Traffic Engineer.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

DENNIS moved, **FOSTER** seconded the motion, and it carried (12-0).

PUBLIC HEARINGS

4. **Case No.: ZON2010-11** - Harvey Farha (Owner/Applicant) requests a City zone change from GO General Office to NR Neighborhood Retail on property described as;

The EAST 62 feet of Lot 3, Jim Fisher Addition to Wichita, Sedgwick County, Kansas, generally located south of Central Avenue, 500 feet west of Woodlawn Boulevard (5921 E. Central Avenue).

BACKGROUND: The applicant owns 5921 East Central Avenue, a .20 acre platted lot, located on the south side of East Central, approximately 900 feet west of North Woodlawn Boulevard. The property is currently zoned GO General Office ("GO"), and subject to a deed restriction recorded on June 15, 1988, that: 1) prohibits the property from being combined with the lots located to the south and 2) modification of the covenant requires a public hearing before the Metropolitan Area Planning Commission and City Council. Conditional Use 560 was also approved on January 27, 2000, to permit a "personal care

service.” The applicant is seeking NR Neighborhood Retail (“NR”) zoning, and currently operates a personal care service, a barber shop, on the application area. The applicant is seeking NR zoning to permit retail sales.

The site is developed with a building containing less than 1,000 square-feet that was constructed as a residence in 1951. With the recent improvements to Central Avenue, the site is served by a commercial grade drive off of Central Avenue. The GO and NR zoning districts share the same signage controls. The primary land use difference between the two districts lies in the fact that the NR district allows retail sales and restaurant without a drive-up uses as a use “by right” while the GO district does not permit these uses. Special NR district regulations restrict individual commercial uses to a maximum size of 8,000 square feet. Supplemental use regulations limit restaurants to a maximum size of 2,000 square feet, and they cannot provide drive-up window service or in-vehicle food service. Outdoor commercial storage or display is not permitted in the NR district. Compatibility setback standards are required. The existing building is setback approximately 25 feet from the north property line. Twenty-five feet is the required maximum compatibility setback.

Property north of the site, across Central Avenue, is zoned LC Limited Commercial (“LC”) and is developed as a strip office center. Property south of the subject site is zoned SF-5 Single-family Residential (“SF-5”) and is developed with single-family residences. Property west of the subject site is zoned GO and is developed with a personal care service, and the property east of the subject site is also zoned GO and is developed as a single-family residence.

CASE HISTORY: The application area is platted as the East 62 feet of Lot 3, Jim Fisher Addition, recorded June 21, 1988. There has been a previous zone case on the subject site in 1987, Z-2806. Z-2806 was a zone change from “AA” (currently SF-5) Single-family Dwelling District and “A” Two-family Dwelling District (currently TF-3 Two-family Residential) to “BB” (currently GO) Office District approved on December 8, 1987. That zone change was subject to the platting of the property (Jim Fisher Addition) which is how the property is currently platted. Conditional Use 560, approved January 27, 2000, permitted a personal care service, subject to conditions.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Strip Office Center
SOUTH:	SF-5	Single-family Residence
EAST:	GO	Single-family Residence
WEST:	GO	Personal Care Service

PUBLIC SERVICES: East Central Avenue, along the north side of the subject site and the main access point to the site, is a paved six-lane principal arterial with approximately 41,000 average daily trips. The nearest major intersection, East Central and North Woodlawn Boulevard, is located approximately 900-feet east of the subject site. North Woodlawn Boulevard is a paved four-lane principal arterial with approximately 39,000 average daily trips. All municipal services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The *2030 Wichita Functional Land Use Guide* depicts this location as being appropriate for “local commercial” uses. Local commercial uses contain concentrations of commercial, office and personal service uses that do not have a significant regional market draw and high retail traffic. The range of uses includes: office, vehicle repair and service, grocery stores, florist shops, restaurants and personal service facilities.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property north of the site, across Central Avenue, is zoned LC and is developed as a strip office center. Property south of the subject site

is zoned SF-5 and is developed with single-family residences. Property west of the subject site is zoned GO and is developed with a personal care service, which the property east of the subject site is also zoned GO and is developed as a single-family residence.

2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned GO. The site could continue to be used as currently zoned as the GO district permits a number of uses that seem to successfully exist in the general proximity of the application area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site currently has a restriction, Covenant 2, which prevents the combining of the application area with residential property located to the south, and another development standard requires cross-lot circulation with properties to the east and west. The property has a screening fence separating the application area from the residential uses located to the south; however the property has not yet been paved to facilitate cross-lot circulation.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: NR zoning has a fairly limited list of commercial uses when compared to the other commercial zoning districts permitted by the code. Approval would add a somewhat wider range of uses for the property than is currently allowed, and make the property more valuable to the applicant.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is consistent with the Comprehensive Plan's designation for "local commercial" uses.
6. Impact of the proposed development on community facilities: None identified.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

FOSTER referred to item #3 on page 3 of the Staff Report with reference to cross lot circulation. He commented that retail sales will potentially generate more traffic and asked if parking access on the site plan should be addressed now.

MILLER explained that the cross lot circulation is from an earlier case when all the lots were rezoned to GO General Office. He said cross lot circulation is developed on a case by case situation and is being reviewed by staff.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **MARNELL** seconded the motion, and it carried (12-0).

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5. **Case No.: ZON2010-12** - LHK Properties, LC (Applicant/Owner) Classic Real Estate, c/o Christian Ablah (Applicant/Contract Purchaser) Baughman Company, c/o Phil Meyer (Agent) Request Amendment #1 to Protective Overlay #219 for items C and J on property described as;

Lot 1, Block A and Reserves "A" and "B" Ridge 400 Addition to Wichita, Sedgwick County, Kansas, generally located southeast of the intersection of Mid-Continent Drive and W. University Avenue.

BACKGROUND: On December 16, 2008, the Wichita City Council approved ZON2008-00022, which granted LC Limited Commercial ("LC") zoning subject to Protective Overlay ("PO") #219 on 1.34 acres located at the southeast corner of South Ridge Road and West University Avenue. The 1.34 acres was

platted in 2009 as the Ridge 400 Addition. PO-219 was adjusted in 2009 (a required 15-foot landscape buffer was reduced to 10 feet, item F), and currently exists as written below:

- A. No off-site or portable signs shall be permitted on the subject property. No signs shall be permitted along the face of any building that faces residential zoning or is across the street from any property that is in a residential zoning district. Signs shall be a monument style and all other signs shall be according to the City of Wichita sign code for the LC Limited Commercial zoning district.
- B. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any abutting or adjacent properties that are in a residential zoning district. Light poles shall be limited to a maximum height, including the base of the light pole, of 15-feet. Light poles shall not be located within any setbacks.
- C. Outdoor speakers and sound amplification systems shall not be permitted.
- D. No buildings shall exceed one story in height with a maximum building height of 25 feet.
- E. A six (6) to eight (8) foot tall masonry wall shall be constructed parallel to the east property lines of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning. A six (6) to eight (8) foot tall cedar fence shall be constructed parallel to the south property lines of the subject site, where it abuts existing single-family residences and the SF-5 Single-family Residential zoning.
- F. A 10-foot wide landscape buffer will be provided along the south and east sides of the subject site. A minimum of 5-foot tall evergreens will be planted at 20-foot centers along the south and east sides. Landscaping will be 1.5 times more than the minimum required by the Landscape Ordinance along the site's street frontages.
- G. All deliveries and trash service shall be between the hours of 6 AM and 10 PM.
- H. The subject site shall comply with the compatibility setback standards on the interior side yard (south) and rear yards (east).
- I. At the time of platting all access onto public right-of-way, cross lot access, utility easements, drainage and the final size and configuration of the subject site shall be resolved, per the standards of the Subdivision standards, as reviewed and recommended by the staff and the appropriate appointed and governing bodies.
- J. The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment; and vehicle repair.

The applicant requests an amendment to Protective Overlay #219 for items C and J. Currently, item C reads that outdoor speakers and sound amplification systems shall not be permitted. The applicant proposes to add to item C: *"with the exception of restaurant order boards"* so that the amended item would state:

"Outdoor speakers and sound amplification systems shall not be permitted, with the exception of restaurant order boards."

The applicant would also like to amend item J by removing a use from the list of prohibited uses on the site. Currently item J reads that a restaurant with drive-in or drive-thru facilities shall not be a permitted use on the subject site. The applicant proposes to remove *"restaurant with drive-in or drive-thru facilities"* so that the amended item would state:

"The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; service station; tavern and drinking establishment; and vehicle repair."

The application area is located on the east side of South Mid-Continent Drive, just northeast of the Mid-Continent Drive and west Taft Avenue intersection. The property to the north is zoned LC and the land

use consists of a fast food restaurant. The property to the south is zoned SF-5 Single-family Residential (“SF-5”) and is developed with a single-family residence. The property to the west, across Mid-Continent Drive, is zoned LC and is developed with a large retail store (Lowe’s). The property to the east is zoned SF-5 and is developed with single-family residences.

If approved, the order board would be subject to the noise compatibility standard (Sec. IV-C.6) that requires that no sound amplification system for projecting human voices shall be permitted on any property zoned NO Neighborhood Office or more intensive if the music and/or voices can be heard within any residential zoning district that is located within 500 feet of the subject site.

Average daily traffic (“ADT”) counts for the peak hour on a Saturday for a sit-down restaurant without an order board have been reported at 20 ADT per 1,000 square feet of floor area; whereas restaurants with drive-thru or order boards have been reported at 59 ADT per 1,000 square feet of floor area.

CASE HISTORY: ZON2008-00022 granted LC zoning to the application area subject to Protective Overlay #219. ZON2009-00017 was an administrative adjustment to the PO to reduce the width of the east buffer from 15 feet to 10 feet. The application area is Lot 1 and Reserves “A” and “B”, Block A, Ridge 400 Addition, recorded in May 2009.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Restaurant
SOUTH:	SF-5	Residential
EAST:	SF-5	Residential
WEST:	LC	Retail

PUBLIC SERVICES: Mid-Continent Drive, along the west side of the subject site, is a paved eight-lane principal arterial with approximately 51,500 average daily trips. The nearest major intersection, Mid-Continent and West Taft Avenue is located approximately 430-feet southwest of the subject site. West Taft Avenue is a paved four-lane urban collector with approximately 14,450 average daily trips. All municipal services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as “Local Commercial.” “This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing.” In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the **Commercial/Office Objective** to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses,” as well as **III.B3**. Work with property owners and businesses to reduce the number of access points along arterial streets, thus improving traffic safety and flow, and **Strategy III.B.6** recommends that traffic generated by commercial activities be channeled to the closest major thorough-fare with minimum impact upon local residential streets.

Commercial Locational Guideline #1 of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. The proposed development complies with this guideline. **Commercial Locational Guidelines #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use; **#5** commercially-generated traffic should not feed directly onto local residential streets and **#6** commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other appropriate areas such as the CBD fringe; segments of Kellogg; established areas of similar development; and, areas where traffic patterns, surrounding land uses and utilities can support such development.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to an amended PO-219 as follows:

Item (C) shall be amended to read: *“Outdoor speakers and sound amplification systems shall not be permitted, with the exception of restaurant order boards.”*

Item (J) shall be amended to read: *“The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; service station; tavern and drinking establishment and vehicle repair.”*

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area is located on the east side of South Mid-Continent Drive, just northeast of the South Mid-Continent Drive and West Taft Avenue intersection. The property to the north is zoned LC and the land use consists of a fast food restaurant. The property to the south is zoned SF-5 Single-family Residential (“SF-5”) and is developed with a single-family residence. The property to the west, across Mid-Continent Drive, is zoned LC and is developed with a large retail store (Lowe’s). The property to the east is zoned SF-5 and is developed with single-family residences. At this point in time, the application area is the transitional boundary from non-residential zoning and land use to less intense zoning and land use.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed with a variety of uses with potential economic return as currently restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed amendment to PO-219 would allow the use of drive-in or drive-thru order boards, which are currently restricted. The order boards have the potential to have a negative effect on the residences to the east of the subject site, depending on the location of the order board(s) on the subject site. Over time staff has received a number of complaints on a city-wide basis from residences regarding speaker systems at a variety of uses, such as car lots, convenience stores and drive-in restaurants. The original PO restriction was put in to protect the remaining contiguous residences that potentially could be rezoned at some future point. If the order board is operated within code it should not detrimentally impact nearby property. The addition of a restaurant with drive-in or drive-thru facilities could increase traffic, noise, and fugitive debris.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as “Local Commercial.” “This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing.” In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the Commercial/Office Objective to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses,” as well as III.B3. Work with property owners and businesses to reduce the number of access points along arterial streets, thus improving traffic safety and flow, and Strategy III.B.6 recommends that traffic generated by commercial activities be channeled to the closest major thorough-fare with minimum impact upon local residential streets.

5. Impact of the proposed development on community facilities: The proposed amendment will not impact community facilities.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

He reported that DAB V recommended a change to the Protective Overlay regarding the trash pickup hours from 6:00 a.m. to 8:00 a.m. and said staff is okay with that recommended change.

FOSTER referred to the noise standard and asked if that was automatic or should that be added to the conditions for the case.

SLOCUM said the noise standard is automatic.

DIRECTOR SCHLEGEL asked if the applicant has agreed with the change suggested by the DAB.

SLOCUM said yes, the applicant has agreed to the DAB change.

PHIL MEYER, BAUGHMAN COMPANY, PA said they are in agreement with staff comments and the change recommended by the DAB.

MOTION: To approve subject to staff recommendation.

DENNIS moved, **MITCHELL** seconded the motion, and it carried (12-0).

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6. **Case No.: CON2010-12** - Jerry J. Nicholas (owner / co-applicant); Phil Turner (co-applicant, prospective purchaser); Edward Roberts (agent) requests a City Conditional Use to permit wrecking and salvage at 3600 North Ohio Avenue on property described as;

Lot 1 EXCEPT the North 400 feet and EXCEPT the South 520 feet, Block 2, Bridgeport 3rd Industrial Addition to Wichita, Sedgwick County, Kansas, generally located 600 feet south of East 37th Street North, east of Ohio Avenue.

BACKGROUND: The applicants are seeking approval of a Conditional Use permit to allow a vehicle impound lot on 5.08 platted acres zoned GI General Industrial (“GI”) located east of Ohio (east of Broadway) and 600 feet south of 37th Street South. One of the co-applicants operates Busy Bee tow truck service which is owned by Auto Craft Collision Repair, an auto body repair company. Typically, vehicle impound lot operator’s tow and store inoperable vehicles. “Vehicle, inoperable” is defined in the *Wichita-Sedgwick County Unified Zoning Code* (“UZC”), Sec. II-B.14.b, as “any vehicle that is unable to operate or move under its own power.” The presence of inoperable vehicles causes vehicle impound lots to be classified as a “wrecking and salvage yard,” which is defined by the UZC (Sec. II-B.14.7.r) as “a lot, land or structure, or part thereof, used for the collecting...storing and/or salvaging of...inoperable vehicles....” The applicant indicates they do not intend to “salvage” or “part out” vehicles parked or stored at this location. The vehicles towed to this location are to be repaired or to be picked up. The proposed use cannot be classified as a “vehicle storage yard” as that use is defined by the UZC (Sec II-B.14.j) as “... the keeping outside of an enclosed building for more than 72 consecutive hours or one or more motor vehicles (except inoperable vehicles)....”

A wrecking and salvage yard is allowed in the LI Limited Industrial (“LI”) and GI districts only with Conditional Use approval, subject to the supplementary use regulations contained in Sec. III-D.6.e and dd. Sec. III-D.6.e stipulates that wrecking and salvage yards may be approved in the LI and GI Districts, provided that such operation: (1) is not abutting an arterial street, expressway or freeway; (2) in the opinion of the planning commission, will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in

excess of five percent of the area of such fence. Sec. III-D.6.dd only applies to wrecking and salvage in the LC Limited Commercial ("LC") through LI districts, and not the GI district.

The applicants' site plan indicates that only the eastern 313 feet of the site would be used for the impound or wrecking and salvage yard. The front 313 feet are reserved for another use; however the entire site is the subject of this Conditional Use request. If the application is approved subject to the site plan attached to this report, the wrecking and salvage use will be restricted to the eastern half of the property plus the driveway to Ohio. Property immediately surrounding the site is zoned GI and is primarily used for warehousing and offices associated with the primary use. The property located immediately south of the application area is owned by the City of Wichita and is developed as a soccer field. In the area further south of the application area there are a number of businesses that have truck trailers parked or stored in the open and there is a site that has dumpsters, roll-off containers and rail-road ties stored in the open. There is also a ready-mix concrete plant and an asphalt and concrete recycling use.

CASE HISTORY: The property is platted as Lot 1, except the north 400 feet and the south 520 feet, Block 2, Bridgeport 3rd Industrial Addition. By February 1958, the property had been zoned "F" Heavy Industry, the precursor district to GI.

ADJACENT ZONING AND LAND USE:

NORTH: GI General Industrial; warehouse, printing
SOUTH: GI General Industrial; soccer fields, truck terminal
EAST: GI General Industrial; warehouse, office
WEST: GI General Industrial; fabrication, office

PUBLIC SERVICES: Ohio Street is a concrete urban collector standard street with 70 feet of right-of-way. Other municipal services normally available exist or can be extended to the site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide depicts this site as appropriate as an employment/industry center. Employment/industry centers are areas with uses or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The property is located outside the boundary of the 21st Street Corridor Revitalization Plan. The GI zoning district is the most intense zoning district contained in Wichita-Sedgwick County Unified Zoning Code ("UZC"), except for the Air Force Base ("AFB") district.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED:

1. In addition to other uses permitted by right in the GI district, the Conditional Use shall permit the operation of a wrecking and salvage yard limited to the parking and storage of inoperable vehicles. The torch cutting, crushing, shearing, baling, shredding, parting-out, salvaging or dismantling of motor vehicles, appliances, scrap or other salvageable materials is prohibited.
2. The site shall be developed and operated in general conformance with the approved site plan. A detailed site plan shall be submitted prior to the commencement of operations that depicts improvements such as buildings, storage and/or parking areas or any other physical improvement relevant to the operation of the use.
3. Screening walls shall comply with Sec. IV-B.3.h, screening walls and fences shall be constructed of standard building materials, customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco concrete or wood, except that the use of the large rectangular concrete blocks as fencing material is prohibited, and none of the inoperable vehicles parked or stored on the site shall be visible from ground level view from adjoining property.

4. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, cited above, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.
5. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
7. Storage of all vehicles shall be organized and maintained in an orderly manner to prevent vermin or rodent harborage and breeding.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property, including areas outside required screening.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the use.
15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Except for two smaller areas, the properties located north of I-235 and south of 21st Street and between Broadway and I-135 are zoned GI, and have been since 1958. Properties in closer proximity to the application area are used for a variety of uses: warehousing, printing, office, fabrication, truck terminal and soccer field. Some of the nearby uses have unscreened truck trailer parking and/or storage. In the larger area there is

unscreened storage of trash dumpsters and roll-off containers and railroad ties. Also, there is concrete and asphalt recycling occurring in the larger area.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned GI which permits an extremely wide range of office, commercial and industrial uses. The site is currently vacant now; however, aerials from 2008 depict the site being used for truck parking or storage. Staff is not aware of how long the property has been vacant, but the property could probably be economically useful as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed use requires Conditional Use approval. The recommended conditions of approval are designed to minimize foreseeable detrimental impacts. In addition to conditions aimed at preventing pollution and prohibiting the salvaging or parting-out of vehicles, one of the conditions requires the visual screening from ground view any parked or stored vehicles.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably cause the current owner and the prospective owner an economic loss in that the current owner would need to find another purchaser while the prospective purchaser would need to find another location. Approval would provide another location where wrecking and salvage is permitted. Owners in the immediate area may argue that this use is out of character with abutting activities and may devalue their investments.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide depicts this site as appropriate as an employment/industry center. Employment/industry centers are areas with uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The property is located outside the boundary of the 21st Street Corridor Revitalization Plan. The GI zoning district is the most intense zoning district contained in Wichita-Sedgwick County Unified Zoning Code ("UZC"), except for the Air Force Base ("AFB") district.
6. Impact of the proposed development on community facilities: Facilities are in place or can be extended to service the site.

DALE MILLER, Planning Staff presented the Staff Report. He reported that DAB VI recommended denial of the request and said a number of individuals from the Bridgeport Area Business Association (BABA) spoke in opposition to the proposal at the DAB meeting. He said at that meeting comments were made that staff should have included BABA's opposition to these types of operations in this location in the Staff Report; however, he said staff felt that would be inappropriate because the proposed protective overlay does not exist yet.

FOSTER referenced the DAB information provided with the Staff Report and asked about cars being stored on top of each other. He asked if there was a height limit on that.

MILLER responded there is no height limitation other than installation of a solid-screen eight-foot fence; however, he said there is a requirement that any stored materials must not be seen from ground level view. In addition, he said the agent indicated at the DAB meeting that vehicles will not be stacked, but will all be on surfaced areas.

FOSTER asked about the proposed boundaries of the protective overlay and asked if this location was outside those boundaries.

MILLER said he would let someone from the Bridgeport Area Business Association answer that question.

MITCHELL referenced page 3 of the Staff Report under “Conformance to Plans/Polices, specifically staff’s reference to this use complying with the 2030 Wichita Functional Land Use Guide as an employment/industry center. He asked how many employees the proposed operation will include because he said it doesn’t appear this use will create a large number of jobs.

MILLER said as far as employment is concerned, it can be either an employment and/or industrial center. He said it is not a requirement that it be both. He said an industrial use would be appropriate for this zoning. He said it can be both uses or separate uses. He said the Planning Commission can decide if the unique definition requires that a large number of folks be employed.

MITCHELL also mentioned that he does not believe this type of operation fits within the “range of uses” such as manufacturing, fabrication, warehouse, etc., mentioned in the Plan.

MILLER said he believes this fits within the examples of uses the Plan states would be appropriate for GI General Industrial zoned property. He said this is an industrial use in GI zoning.

MARNELL clarified that the fence shown on the slides would not comply unless the bottom half (solid masonry/concrete) was 8-foot tall.

MILLER responded that is correct.

ED ROBERTS, REAL ESTATE RESOURCE, AGENT FOR THE APPLICANTS JERRY AND VIRGINIA NICHOLAS (OWNERS) AND PHIL TURNER (PROSPECTIVE PURCHASER) OWNER OF AUTO CRAFT said the site will employ six to seven people at the Busy Bee Tow Truck Operation. He said Auto Craft has six body repair shops in the metropolitan area that employ 87 employees; with a payroll of over \$8,000,000 annually. He said the proposed use is for an impound lot only, they will not conduct any salvage operations or dismantling of vehicles but because of the zoning regulations, they must apply for a conditional use for a wrecking and salvage yard in order to operate the impound lot. He said this location is strictly to tow cars in, and stage them until the applicant can deliver them to different locations to be repaired. He said if vehicles are non-repairable they will be turned over to a salvage operation to be destroyed or crushed or auctioned at an auto auction. He said the site, which is zoned GI General Industrial can be used for this proposed use. He reiterated that this will not be a wrecking and salvage operation. He mentioned provisions of the Staff Report and said in their opinion this use will not adversely impact the character of the neighborhood because for five years the site was used to store tractors and trailers with no screening at all. He added that the neighborhood has a number of businesses that store trucks and tractors, dumpsters, railroad ties, and other items without any screening at all. He said there is asphalt recycling and other uses in the area that store mounds of dirt as high as I-135 with no screening. He said apparently GI zoning doesn’t require screening of these types of facilities. He said they will screen so any vehicles cannot be seen, and added that they will not stack vehicles on top of each other. He said two and three-quarter acres of the site will be used for the impound lot. He said the front two and one-half acres of the site will be used for a warehouse, distribution or manufacturing, not wrecking and salvage. He said four landowners are impacted by this request and he has visited with them. He said two properties supported the application, one of which was Prairie Print. He said at the DAB there were comments about the need for this type of operation because this occurs in our economy; wrecked cars have to be towed. He said regulations state you have to have a conditional use for an impound lot. He said they have spent six to seven months looking for a location for this operation, and even leased a space on the south side of 21st Street east of Broadway, but lost the lease when the property was sold. He said they have looked for the heaviest industrial zoning they could find. He said this is an ideal location with five acres; six inches of crushed asphalt and it is already fenced. He said he also understands the surrounding businesses don’t want it in their backyard, but it needs to go somewhere and this is the heaviest industrial zoning. He concluded by saying that they would appreciate approval of their request, and added that Mr. Turner runs a first class operation. He ended by saying that they are not

interested in establishing something that is going to be an eyesore in this neighborhood because then they will not be able to sell the frontage property.

FARNEY asked how long vehicles will sit at the facility.

ROBERTS said the shortest amount of time possible. He said Auto Craft doesn't make any money if the vehicles sit. He said they need to be moved out to Auto Craft shops to be repaired or if the cars are totaled, sent to auction or to a salvage yard.

FARNEY clarified then towing companies will bring vehicles to the lot from other sources other than vehicles to be repaired by Auto Craft.

ROBERTS said yes, it is a secondary income for Auto Craft; but their first priority is cars to be repaired by them.

MARNELL asked if auto auctions will be conducted at this site.

ROBERTS said it was his understanding that vehicles will be taken to the insurance auction site at 53rd Street North and Broadway.

KLAUSMEYER asked for clarification on the specific type of fence that will be installed at the site and if it will encompass the whole lot depicted on the site plan.

ROBERTS said the fence will just encompass the back lot where the cars are going to be stored. He referred to the grey metal fencing along properties on South West Street, and admitted that although not very attractive, they screen all of the property. He said screening will probably be that type of fence. He said they located several impound lots in NR Neighborhood Retail zoning and tried to find one of those sites that had been grandfathered in for sale, but were unsuccessful. He said that is why a conditional use permit is required. He said they tried to find the least obtrusive area in the heaviest industrial zoning in the City for the operation.

FARNEY clarified then the front half of the property is included in the application.

MILLER responded yes and the whole site was included as far as legal notification was concerned.

FARNEY asked if they could come back and request that cars be stored in the front half of the property.

MILLER said technically the applicant can come back and amend the site plan, but this application is only allowing the impound lot on the back half of the property. He said they would have to amend the site plan before they could legally place vehicles on the front part of the lot.

PATRICK HUGHES, ADAMS JONES LAW FIRM, REPRESENTING THE BRIDGEPORT AREA BUSINESS ASSOCIATION (BABA) said the boundaries of the proposed protective overlay are the Big Ditch on the north, 29th Street on the south, I-135 on the east, and Broadway on the west. He said this location is within that proposed overlay area. He said the purpose of BABA is a group of businesses in the industrial park who have joined together for the very purpose of considering and giving voice to land use goals, much like the Planning Commission, so the neighborhood grows in an organized, purposeful, beneficial way that is beneficial to the members of that community and the community at large. He said the Bridgeport area contains a substantial number of businesses that have a substantial investment in the community. He said in the past five years tens of millions of dollars of new, quality facilities have been constructed at Bridgeport by businesses that provide a significant tax base for the City as well as jobs for the community. He said much of that new investment in facilities has been along Ohio Street between 29th and 37th Streets. He specifically mentioned Piping Equipment Company, which he said is located immediately across the street from this proposal, which has spent \$4,000,000 in the past three years on a new facility. He said in addition, they have a payroll of \$10,000,000 per year and employ

anywhere from 150-350 people at any given time. He said they could have located to Park City or Newton, but the owner felt Bridgeport was a community where his investment would fit. He referenced pictures of some of the outdoor storage components in the area, which he said were not a true representation of what is going on in the area. He commented that the Bridgeport area is visible from I-135 and provides a first impression for people who enter the community about the quality of Wichita's business and industrial opportunities. He said when Wichita competes with other communities for new business with access to the same highway, they want to present a first class, clean environment to those who would invest millions or more dollars in the City in new facilities in the future. He said protecting that progress towards that vision and laying the groundwork for it to continue should be a priority. He mentioned that BABA was in the process of creating a protective overlay to achieve that goal.

He referenced the proposed impound lot for storage of wrecked/junk vehicles and said it was not like the surrounding facilities such as the print shop, office and warehouse, Piping and Equipment facility, soccer field and truck terminal and said that it was not comparable with the existing uses in the area. In addition, he said it was not an employment/industry center as suggested in the 2030 Wichita Functional Land Use Guide. He said it does not create employment opportunities. He said they are also concerned that approval of this wrecking use will provide the next group to appear before the MAPC a reason to request approval of a similar use, simply because there is already a wrecking yard in the area.

MOTION: To give the speaker two additional minutes.

MITCHELL moved, **MILLER STEVENS** seconded the motion, and it carried (12-0).

He commented that experience in the Bridgeport area says that once a use has been approved on a property, enforcement of limitations on that use is virtually non-existent. He referred to a mound of concrete and dirt in the area and said that Central Inspection has made a decision not to enforce the restrictions that are in place on that property. He said part of protecting the community from adverse land use is protecting it from the risks that come with a particular land use. In addition, he concluded by saying that storage of junk vehicles with no one present invites vandalism and crime in the area. He ended by expressing concern that expansion of the proposed use can be accomplished by merely an adjustment of the site plan that will not come before the Planning Commission or be subject to a new public hearing. He ended by stating that DAB VI voted 8-0 against allowing the proposed conditional use. He said they feel it would be a step backward for the Bridgeport area and discouraged the Planning Commission from approving the request.

LEONARD HICKS, 2230 CARDINAL DRIVE said he owned two buildings in the Bridgeport area. He said there are deed restrictions that these properties not be used for auto sales. He said the City was the original owner of this area and City staff indicated that this area would not be used for auto sales. He said there were no restrictions about wrecking/salvage yards, just no auto sales. He said he does not think the City intended this area to go in that direction. He said they could have located somewhere else, but they were assured by City staff when they purchased property that this would be a nice area and that businesses would have to adhere to certain standards.

BOB ALDRICH, VICE PRESIDENT, WINDY CITY RAILROAD SERVICE, 804 N. MAIN STREET said many of you know the things we have been trying to do in that area for a long time. He said this new business will bring in a handful of employees while the existing businesses employ over 6,000. He said this will have an adverse affect on surrounding businesses. He said this is a "high end" industrial area and business owners have sunk millions of dollars into the area to keep it nice and attract new businesses and growth. He said this is the first area you see as you come down I-135 and it is a gateway to Wichita. He said wrecked vehicles do not set a good precedent. He said they would like to maintain the same environment for industrial and manufacturing growth in the area.

ROBERTS said he wanted to correct a previous statement concerning auctions at the property. He said Busy Bee Towing would have an auction at the property probably every two months on a rotating basis. He said as far as neighborhood protection is concerned, the applicant will have a fulltime employee at the

property at all times because it is a 24/7 operation. In addition, he said drivers would be watching the neighborhood as they made deliveries and left the facility during the night time. He added that previously these five acres had zero employees, no one on site and was used to store trucks. He said visually the site cannot be seen from I-135 because there is a tree row behind it. He requested that the Planning Commission give their request serious consideration because this kind of operation needs to be located somewhere in our city where it will be the least obtrusive. He said they believe this GI zoning meets that requirement. He concluded by saying that they will make the site very attractive and aesthetically pleasing to the neighborhood.

SHERMAN clarified then there would be a car auction at that location every two months.

ROBERTS responded yes, but hopefully there will be nothing to auction. He said totaled cars or cars that are not claimed will need to be auctioned.

SHERMAN asked legal staff about the “no auto sales clause” on the deed.

JOE LANG, CHIEF DEPUTY CITY ATTORNEY said whether there is a “no auto sale clause” in the deed is not an issue for the Planning Commission to consider. He said that clause will be enforced separately.

CHAIRMAN VAN FLEET asked isn't there multiple similar locations south of 29th Street?

MILLER asked in terms of GI zoning? He commented that in a previous case a map exhibit showed 12 sites which staff was reviewing, but he said it was possible addresses were counted versus actual individual users. He said he can't verify that there are 12 similar operations, but he said there are other similar uses in the area.

CHAIRMAN VAN FLEET asked if any of those uses were located north of 29th Street.

MILLER said he believed there were some but he doesn't remember the map exactly.

MITCHELL said he believed the deed restrictions were imposed at the time Urban Renewal redeveloped the area and provided improvements. He asked legal staff if there was any reason the restrictions can't be enforced

LANG said that was a separate issue from zoning.

MITCHELL asked legal staff if zoning would override any deed restrictions.

LANG said any deed restrictions would still apply.

MOTION: To approve subject to staff recommendation.

MARNELL moved, **FARNEY** seconded the motion, and it failed (5-7).

FOSTER, HENTZEN, KLAUSMEYER, MCKAY, MITCHELL, VAN FLEET, MILLER STEVENS – No.

MITCHELL offered to make a substitute motion to deny the application.

MARNELL asked legal staff since the motion to approve failed; doesn't that effectively mean a denial?

LANG said failure to approve is a denial but it might be clearer if a specific motion is made to deny the application.

DIRECTOR SCHLEGEL suggested citing findings in the denial motion.

MITCHELL said he does not believe the application conforms to the 2030 Wichita Functional Land Use Guide as far as the range of uses that could increase employment. He added that many similar operations in the area referred to by the agent were grandfathered in as “non-conforming uses” and are in violation of current regulations but not enforced by the Office of Central Inspection.

MARNELL said this is the worst case of NIMBY (Not In My Back Yard) he has ever seen. He said for the folks in Bridgeport to come up and attack a business like this in the most industrial area in the City is unconscionable to him. He said if he is not mistaken several hazardous businesses that transport gasoline are located in this area, along with recycling and cement plants. He said it is up to the viewer’s eye as to what is an eyesore and mentioned tractor/trailer trucks contained within a chain link fence. He said it makes no sense at all to reject a clean business compared to what can legally go in a GI General Industrial area “by right.”

SUBSTITUTE MOTION: To deny the application.

MITCHELL moved, **MCKAY** seconded the motion, and it carried (8-4).
DENNIS, DOWNING, FARNEY and **MARNELL** – No.

MITCHELL said the reason he did not support the motion to approve the application is because he still believes this type of use is not compatible with what is being done in this area. He said there are other sites more appropriate. In addition, he said he does not believe this application complies as an employment/industry center as defined by the 2030 Wichita Functional Land Use Guide.

FOSTER asked if there were any time lines for completion of the proposed protective overlay.

MILLER responded that staff is in the process of working with the Bridgeport property owners, but that no time line has been established for completion of the project.

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7. **Case No.: CON2010-13** - Gary and Glenna Hartman (owners), Van W. Tarr (agent) request a City Conditional Use to permit outdoor vehicle and equipment sales on property described as;

A tract beginning at the Northwest corner of the Northwest Quarter of Section 20, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence East 289.05 feet; thence South 160.5 feet; thence West 289.05 feet; thence North 160.5 feet to the place of beginning, except the North 40 feet for road, and except the West 40 feet for road, and except a tract described as beginning at a point 75.00 feet East and 40.00 feet South of the Northwest corner of said Section 20; thence Southwesterly to a point 65.00 feet South and 50.00 feet East of the Northwest corner of said Section; thence South 95.5 feet parallel to the West line of said Northwest Quarter; thence West 20.00 feet; thence North 120.5 feet; thence East to the point of beginning, generally located southeast corner of 47th Street South and Seneca Street.

BACKGROUND: The applicants are requesting a Conditional Use to allow outdoor vehicle and equipment sales on the 0.66-acre, unplatted LC Limited Commercial (“LC”) zoned tract. Per the Unified Zoning Code (UZC, Art.III, Sec.III-D, 6(x)), outdoor vehicle and equipment sales may be permitted with a Conditional Use in the LC zoning district. The site and its buildings appear to be vacant.

The site plan shows a sales office (built 1952), two other buildings, a carport (noted as to be removed by the seller), vehicle display area (six spaces), customer parking (two parking spaces), employee parking (four parking spaces), future unmarked (complete dimensions not given) customer parking, two drives onto 47th Street South and what may be proposed landscaping in the 47th Street South right-of-way (ROW). The site plan also shows cross access through the abutting eastern neighbor’s property.

The office-sales building has bay doors and was listed by the appraiser's office as an auto repair garage. Per the UZC Art IV, Sec IV-A, "Off-Street Parking Standards," the 1,344.76-square foot office-sales building would trigger the need for three parking spaces, while the other two buildings' total of 1,343.12-square feet would trigger the need for another three parking spaces. The UZC also requires two parking spaces for the first 10,000-square feet of lot area used for sales, display or storage purposes, plus one parking space for each 10,000-square feet of lot area used for sales, display or storage purposes thereafter; the applicant has not given that square footage. Dimensions on the vehicle display parking spaces are not given, however the site plan shows most of the display area to be 32.5 feet deep and if the straight-in (versus angled) display spaces are 18 feet deep, the applicant would have 14.5 feet left for vehicle circulation; Fire prefers a 15 foot minimum distance for their emergency service vehicles. Parking in the LC zoning district can be in setbacks, except for that portion of the setback required for landscaping. The site plan shows future customer parking to be within the LC setback, and what appears to be landscaping in the 47th ROW. Parking needed for the site at this time is unresolved. Public Works would have to approve landscaping in the 47th ROW, and may require a minor street permit, which carries an annual fee.

Cross lot access through a property not owned by the applicants would require both the applicant and the other owner to provide a cross lot access easement. The proposed cross lot access is not paved, and would have to be paved per City Standards. The current location of the site's two drives appears not to meet the current Subdivision Standard of 200 feet between drives. The site has 40 feet of half street 47th ROW, while the other three corners of the intersection have 75 feet and 80 feet of half-street 47th ROW. The site has 50 feet of half-street Seneca ROW, while the adjacent western property has 75 feet of half-street Seneca ROW. The Traffic Engineer is requiring dedication of additional ROW, which would probably require redevelopment of the site, as at least one building, the proposed vehicle display area, vehicle circulation, future parking and any future landscaping would be removed.

The larger area is a mix of LC and SF-5 Single-Family Residential ("SF-5") zoning. The LC zoning is located along the 47th Street South – Seneca Street intersection. The property abutting the south side of the site is zoned LC and consists of an unimproved partially screened (mostly old metal fence) storage area and a single-family residence (no built date); all owned by the applicants and shown by the appraiser as being part of the site. A small LC zoned free standing retail store (1959) and field are located south of the just mentioned development. The eastern abutting property is zoned LC, and is developed as an office-warehouse (1962) and a field. Property located west of the site, across Seneca is zoned LC, and is developed as a convenience store (1980), a car wash (1990) and a field. Property located northwest of the site, across the Seneca – 47th Street intersection is developed as a Sonic fast food restaurant (1997) and a field. Property located northeast of the site, across the Seneca – 47th Street intersection is developed as an auto repair garage (1952), a restaurant (1968) and SF-5 zoned single-family residences (mid 1950s). There are not any other car sales lots in the area, with the nearest (legal) ones located, further east of the site off of Broadway Avenue. Approval of this request could trigger the auto repair site, located across 47th from the site, to apply for a Conditional Use for Outdoor Vehicle and Equipment Sales.

CASE HISTORY: The subject property is an unplatted tract. The area the site is located in was annexed into Wichita between 1971 and 1980.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, SF-5	Sonic fast food restaurant, a field, auto repair garage, a restaurant, single-family residences
SOUTH:	LC	Unimproved storage area, single-family residence, free standing small retail store, a field
EAST:	LC	office-warehouse, a field
WEST:	LC	Convenience store, a car wash, a field

PUBLIC SERVICES: The site has two drives onto 47th Street South, a four-lane arterial street, with a center turn lane. As shown on the site plan it does not have access onto Seneca Street a four-lane arterial street, with a center turn lane, although the applicants' abutting south property does have access to Seneca. The site has 40 feet of half-street 47th ROW, while the other three corners of the intersection

have 75 feet and 80 feet of half-street 47th ROW. The site has 50 feet of half-street Seneca ROW, while the adjacent western property has 75 feet of half-street Seneca ROW. The Traffic Engineer is requiring contingent dedication of additional ROW, which would probably require redevelopment of the site, as at least one building, the proposed vehicle display area, vehicle circulation, future parking and any future landscaping would be removed. Municipal water and sewer services are currently provided to the subject property; easement was acquired when the City provided sewer to the area.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies this site as appropriate for “Local Commercial” development. The “Local Commercial” category includes commercial, office and personal service uses that do not have a regional draw. The site’s LC zoning is appropriate for this category. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site has access to 47th Street South, an arterial, but the current, cramped development of the site makes the implementation of design features difficult. Additionally, the Commercial Locational Guidelines of the Comprehensive Plan recommend that commercially-generated traffic should not feed directly onto local residential streets. The site’s location meets these criteria.

The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg Avenue and Broadway Avenue, or other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. There are no other car sales lots in the area; the nearest (legal) ones are located, further east of the site off of Broadway Avenue. The site’s office-sales building has bay doors and was listed by the appraiser’s office as an auto repair garage. If approved, the applicants’ request would be the first car sales lot in the area. Approval of this request could trigger the auto repair site, located across 47th from the site, to apply for a Conditional Use for outdoor vehicle and equipment sales.

In the past the MAPC has identified smaller car sales lots as being more of a local retail establishment in their nature, as opposed to the cluster of larger car sales lots located primarily along Kellogg Avenue and Broadway Avenue, which are more regional in their nature. The MAPC has also recommended that buildings that had in the past been used for automobile activities, such as gas stations or auto repair garages, be considered as possible sites for car sales.

The site is within the South Wichita/Haysville Area Plan (adopted 2002), which identifies issues and goals within the area. Issues in the Plan included: the infrastructure, image and community relationships, property maintenance, housing, services, existing and future commercial development, parks and recreation and education and schools. Property maintenance on the site is less than on the adjacent properties, but possible ROW dedication make investment in the site problematic. The most recent development in the area (1980-1997) has been a convenience store, a car wash and a Sonic fast food restaurant, all of which have improved the appearance of the area. Additional ROW was acquired from these properties, which conforms to the Plan’s goal of widening of 47th from K-15 to West Street, to at least five-lanes, with streetscaping. Because there are no car sales lots in the 47th Street South – Seneca Street area, the Plan does not specifically address them in this area, but instead refers to them being phased out of the Broadway area, contrary to the already noted intent of the Commercial Locational Guidelines.

RECOMMENDATION: Approving the applicant’s request for car sales does not match the development patterns of this area along 47th Street South and Seneca, as the nearest (legal) car sales are located further east, along Broadway Avenue/old Highway 81. Commercial development in the area consist of the more recently built convenience store, a car wash and a Sonic fast food restaurant mixing with older small free standing retail, a restaurant, an auto repair garage, an office warehouse and undeveloped fields. If approved, the applicant’s request would be the first car sales lot in the area. Approval of this request could trigger the auto repair site, located across 47th from the site, to apply for a

Conditional Use for Outdoor Vehicle and Equipment Sales. Based on the information available prior to the public hearing, MAPD staff recommends the application be DENIED.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is a mix of LC and SF-5 Single-Family Residential ("SF-5") zoning. The LC zoning is located along the 47th Street South – Seneca Street intersection. The property abutting the south side of the site is zoned LC and consist of an unimproved partially screened (mostly old metal) storage area and a single-family residence (no built date); all owned by the applicants. A small LC zoned free standing retail store (1959) and field is located south of the just mentioned development. The eastern abutting property is zoned LC and is developed as an office-warehouse (1962) and a field. Property located west of the site, across Seneca is zoned LC and is developed as a convenience store (1980), a car wash (1990) and a field. Property located northwest of the site, across the Seneca – 47th intersection Street is developed as a Sonic fast food restaurant (1997) and a field. Property located northeast of the site, across the Seneca – 47th Street intersection is developed as an auto repair garage (1952), a restaurant (1968) and SF-5 zoned single-family residences (mid 1950s). There are no other car sales lots in the area, with the nearest (legal) ones located, further east of the site off of Broadway Avenue.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned LC. The property is suitable for the commercial uses to which it has been restricted. Those uses include being used as an auto repair garage, a past use on the site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The applicants' site is over developed for its size and is less maintained than other commercial properties in the area. As presented the site has no room for landscaping, less than the minimum required for emergency service circulation and the outright or contingent dedication of ROW would only make the site smaller. ROW dedication also makes investment in the site problematic.
4. Conformance of the requested change to adopted or recognized Plans/Policies:
The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies this site as appropriate for "Local Commercial" development. The "Local Commercial" category includes commercial, office and personal service uses that do not have a regional draw. The site's LC zoning is appropriate for this category. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site has access to 47th Street South, an arterial, but the current, cramped development of the site makes the implementation of design features difficult. Additionally, the Commercial Locational Guidelines of the Comprehensive Plan recommend that commercially-generated traffic should not feed directly onto local residential streets. The site's location meets these criteria.

The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg Avenue and Broadway Avenue, or other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. There are no other car sales lots in the area; the nearest (legal) ones are located, further east of the site off of Broadway Avenue. The site's office-sales building has bay doors and was listed by the appraiser's office as an auto repair garage. If approved, the applicants' request would be the first car sales lot in the area. Approval of this request could trigger the auto repair site, located across 47th from the site, to apply for a Conditional Use for outdoor vehicle and equipment sales.

In the past the MAPC has identified smaller car sales lots as being more of a local retail establishment in their nature, as opposed to the cluster of larger car sales lots located primarily along Kellogg Avenue and Broadway Avenue, which are more regional in their nature. The MAPC has also recommended that buildings that had in the past been used for automobile activities, such as gas stations or auto repair garages, be considered as possible sites for car sales.

The site is within the South Wichita/Haysville Area Plan (adopted 2002), which identifies issues and goals within the area. Issues in the Plan included the infrastructure, image and community relationships, property maintenance, housing, services, existing and future commercial development, parks and recreation and education and schools. Property maintenance on the site is less than on the adjacent properties, but possible ROW dedication make investment in the site problematic. The most recent development in the area (1980-1997) has been a convenience store, a car wash and a Sonic fast food restaurant, all of which have improved the appearance of the area. Additional ROW was acquired from these properties, which conforms to the Plan's goal of widening of 47th from K-15 to West Street, to at least five-lanes, with streetscaping. Because there are no car sales lots in the 47th Street South – Seneca Street area, the Plan does not specifically address them in this area, but instead refers to them being phased out of the Broadway area, contrary to the already noted intent of the Commercial Locational Guidelines.

5. Impact on Community Facilities: All public facilities are available, but there is a need for an additional, dedication of ROW on both the site's 47th Street South and Seneca Street frontage.

However if the MAPC supports this request, based on their past support of using buildings that had in the past been used for automobile activities, such as gas stations or auto repair garages, be considered as possible sites for car sales. Staff recommends the following conditions:

1. Obtain all permits and inspection as required by OCI. All development will be per City Code including landscaping, code compliance and any other applicable standards.
2. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of cars and light trucks, as long as it continues to operate as a vehicle repair, limited garage. No sale or rental of trailers, motorcycles or scooters, vehicles or trucks larger than pickups are permitted.
3. No automotive service or repair work shall be done on the site unless it is entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
4. The applicant shall submit a revised site plan for review and approval by the Planning Director, prior to the issuance of a building permit, per City Standards, within 6 months of approval by the MAPC or the City Council. The site will be developed according to the revised site plan.
5. The applicant shall install and maintain landscaping in accordance with the landscape plan submitted with the revised site plan, within six months of approval by the MAPC or the City Council. The landscaping plan will be reviewed and approved by the Planning Director, prior to issuance of any permits. The applicant will remove all asphalt needed to come into compliance with the Landscape Ordinance and to ensure that development does not encroach into right-of-way.
6. A parking barrier, such as a heavy rail type, shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
7. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons.

8. There shall be no use of elevated platforms for the display of vehicles. All vehicles for sale or for repair must be on a concrete, asphalt or an approved all weather surface.
9. No outdoor amplification system shall be permitted.
10. No outside storage of salvaged vehicles or vehicles waiting for repair shall be permitted in association with this use. Outside storage of parts, including tires, associated with the car repair, limited, operation shall be within a 6-foot solid screened area.
11. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted. Outside pole lighting shall be no taller than 12 feet, including the base, and directed onto the site and away from the residential development abutting the west side of the site.
12. All trash receptacles, oil containers or any similar type of receptacles for new or used petroleum products or trash shall have solid 6-foot screening around it. The gate shall be of similar materials as the screening.
13. The entrances shall be reviewed and approved by the Traffic Engineer. This must be provided to the City, prior to the Conditional Use being finalized. The applicant shall guarantee the closure of all but the approved entrances according to City standards.
14. Contingent dedication by separate instrument 20 feet of right-of-way along the site's 47th Street South frontage. Contingent dedication by separate instrument 10 feet of right-of-way along the site's Seneca Street frontage. This must be provided to the City, prior to the Conditional Use being finalized.
15. All improvements shall be completed within 6 months of the approval of the Conditional Use by the MAPC or the City Council. No selling of cars shall be allowed until all permits have been acquired and all improvements to the site have been made.
16. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
17. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

MCKAY recused himself from the item and left the bench.

BILL LONGNECKER, Planning Staff presented the Staff Report. He referred to a revised site plan that was handed out at the meeting. He briefly reviewed the changes which included the following: the landscaping was no longer in the right-of-way but was moved onto the property; the applicant rearranged display and parking areas, including three lateral spaces along 47th Street which allows for a 15-foot Fire Lane; the carport was removed; and new paving and parking spaces were added for customers and employees in the south side of the site. He commented that the revised site plan loosens up a very tight site. He added that staff did recommend denial and cited findings; however, he said staff had also offered conditions for the Conditional Use if the Planning Commission supported the request. He said he did not find any other legal, non-conforming car sales lots or any case history for car sales lots for this area. He stated that DAB IV recommended approval with the Staff's recommended conditions. He said the agent for the applicant would like to revise the conditions of items #4, #5, and #15 from six months to one year, which staff is not opposed to. In addition, he said they would also like item #14, the contingent dedication by separate instrument waived, which staff was still recommending.

MITCHELL referred to paragraph two of page four of the Staff Report and commented so staff was leaning towards substituting Seneca Street instead of Broadway for future car lots.

LONGNECKER responded no, not necessarily.

GREG FERRIS, AGENT FOR THE APPLICANT said he was contacted by the applicant after the DAB meeting. He said he went through the site plan and visited with staff regarding their concerns. He said in the new site plan they will relocate the landscaping and put it on the property; they will create a Fire Lane for safety consideration; they will pave additional parking spaces and remove the car port. He said basically this proposal will clean up the area, which is an eyesore as it is today. He said currently the site is vacant and not being used or productive. He said they will paint, clean up the area and provide landscaping which will provide a dramatic improvement over what is there today. He said some of objections staff have are no longer viable. He said this is a mixed use commercial area and the neighbors are not adverse to this proposed use. He said small car lots are more local in character. He said this is not like one of the regional car lots along Kellogg or South Broadway. He said small/local car lots are appropriate in some areas. He said this is not out of character in any way, shape or manner for this area and added that he felt this does meet the criteria of local retail type use as defined by the Comprehensive Plan. In addition, he said he is not sure what else the property is suitable for. He said the property has been on the market and they have a contract/purchaser. He said the proposed use will improve the area and have no detrimental effect. He said DAB IV recommended approval of the request; that it was not something that raised any red flags; and commented that it was not easy to get a car lot approved by a DAB. He said they concurred with staff recommendations with the exception that they would like to have one year to complete development and they were requesting that the contingent dedication by separate instrument be waived. He said they felt it was wrong for the Planning Department to compel someone who goes through a process to give something to the City, especially requiring a dedication on a property this narrow. He said they believe it is taking without compensation. He concluded by saying that the applicant has no problem with the other requirements and added that the neighborhood has no objections to the proposal.

FARNEY asked if there were underground storage facilities at the site.

FERRIS said there were at one time but they have been removed.

Responding to a question from **FOSTER** concerning the number of spaces for cars, **FERRIS** clarified that there were six spaces total, three on the right and three in the front.

MITCHELL asked if it will be necessary for the City to take the parking spaces adjacent to 47th Street if they decide to improve the intersection at 47th Street and Seneca Street for a right-turn lane.

FERRIS said there is a normal right-of-way there now. He said he thinks the 47th Street plan, if it ever occurs, is to create an additional lane there. He said in that case, the City would come in and buy the property. He said whether this application is approved today or not the City is going to have to buy that property in the future, but because the applicant is requesting a Conditional Use; it doesn't seem justified that the applicant should be required to give the City a piece of property. He said if the intersection improvements occur those spaces along 47th Street can be moved further to the south and the building can be torn down. He commented that those things cost money and that is why they feel they should be compensated for whatever land the City takes.

MITCHELL said so you think it will be possible to adjust the property if 47th Street is improved?

FERRIS said they can tear down the building as part of a new site plan.

MOTION: To approve subject to staff recommendation including deleting item #14 which was the contingent dedication of right-of-way along 47th Street and changing the requirement on items #4, #5, and #15 from six months to one year.

DENNIS moved, **MARNELL** seconded the motion.

SUBSTITUTE MOTION: To deny subject to staff recommendation.

FOSTER moved.

The motion died due to lack of a second.

FOSTER said he was not convinced of the economical viability of the site as it is shown on the site plan.

ORIGINAL MOTION PASSED (11-1).

FOSTER– No.

NON-PUBLIC HEARING ITEMS

8. Other Matters/Adjournment

Other Matters/Adjournment

DIRECTOR SCHLEGEL referred to the handout which was the invitation to Goody Clancy's draft of the vision principles and initial recommendations of the Downtown Master Plan on Wednesday, April 28, 2010 from 6:00-8:00 P.M. at the Scottish Rite, 332 E. 1st Street. He said members could RSVP at downtownwichita.org or by calling 264-6005.

MARNELL asked how the protective overlay for the Bridgeport area would be handled, like a neighborhood plan? He said he was concerned about putting restrictions on property not owned by the applicant.

MILLER said it will be overlay like the Air Force Base Overlay. He commented that when the group originally came in, staff asked them to identify a core of contiguous properties for the overlay because what they had were scattered pieces of property which staff did not feel would create an effective overlay. He said that is what has taken the process so long. He added that property owners would be allowed to "opt out" of the overlay.

MARNELL clarified so individual property owners will have the ability to "opt out" of the overlay?

MILLER said staff assumed that would be an option.

MARNELL asked do they have to file an application or will this be an amendment to the zoning code?

DIRECTOR SCHLEGEL responded that any change would come as an amendment to the Unified Zoning Code.

KNEBEL clarified that the Planning Commission has taken the step to assign this proposal to staff already.

HENTZEN commented if we can't put these types of operations in the lowest category of zoning, where are we going to put them.

The Metropolitan Area Planning Department informally adjourned at 3:00 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2010.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)